IN THE

Supreme Court of the United States

October Term, 1950.

No. 5, Original.

STATE OF NEW JERSEY,

Complainant,

against

STATE OF NEW YORK and CITY OF NEW YORK,

Defendants,

COMMONWEALTH OF PENNSYLVANIA,

Intervenor.

MOTION OF THE CITY OF PHILADELPHIA FOR LEAVE TO INTERVENE AND TO FILE THE ANNEXED ANSWER TO THE PETITION OF THE CITY OF NEW YORK FOR MODIFICATION OF DECREE.

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Now, comes the City of Philadelphia, by Abraham L. Freedman, its City Solicitor, and respectfully moves this Court for leave to intervene herein, to file the annexed Answer to the Petition of the City of New York for modification of a certain decree, and to participate in all proceedings and hearings, offering evidence on its behalf as it considers necessary, appropriate and relevant, and assigns in support of this motion the following reasons:

1. The City of New York has filed a petition to amend the decree entered by this Court on May 25, 1931, in *State of New Jersey v. State of New York and City of New York, Defendants, Commonwealth of Pennsylvania, Intervenor,*

October Term, 1930, No. 16, Original, by granting the City of New York an additional allotment of the equivalent of 360,000,000 gallons per day from the waters of the Delaware River and its tributaries.

2. The City of Philadelphia was not a party to the original proceedings in this Court as of October Term, 1930, No. 16, Original, 283 U.S. 805, because this City had not then been granted the broad powers of home rule which it now has under the Constitution of Pennsylvania, as implemented by the First Class City Home Rule Act adopted by the General Assembly of the Commonwealth of Pennsylvania, all as more fully set forth in paragraphs 6, 7, 8, 9 and 10 hereinbelow.

3. The City of Philadelphia is located on the Delaware River in eastern Pennsylvania, and presently obtains from that source for the use of its municipal water supply system alone 200,000,000 gallons of water per day, an amount equal to approximately one-half of the water distributed daily through the municipal system, exclusive of the vast quantities of Delaware River water utilized directly by Philadelphia industries.

4. The City of Philadelphia owns and operates a vast system for the supply, purification and distribution of water to its more than two million inhabitants, which system has a present value in excess of $150,000,000.

5. The City of Philadelphia also owns and operates a vast system for the treatment and disposal of sewage within its territorial limits, which system has a present value in excess of $100,000,000, and, under existing agreements with certain adjoining townships, provides sewage disposal services for such localities.

6. The First Class City Home Rule Act (Act of April 21, 1949, P. L. 665, 53 P. S. [Supp.] § 3421.1), adopted pursuant to Article XV, Section 1 of the Constitution of Penn-

sylvania, granted broad powers of local self-government to the City of Philadelphia, under which powers the citizens of Philadelphia adopted on April 17, 1951 the Philadelphia Home Rule Charter which became effective January 7, 1952.

7. Under Section 5-800 of the Philadelphia Home Rule Charter, the Water Department of the City is charged with the responsibility of operating the City's water supply system and the City's sewage disposal plants and of constructing and maintaining facilities for such purposes.

8. Under Section 5-300 of the Philadelphia Home Rule Charter, the Department of Public Health is charged with the responsibility of administering statutes, ordinances and regulations relating to public health, including those dealing with water and sanitation conditions in the City of Philadelphia.

9. Under Section 4-500 of the Philadelphia Home Rule Charter, the Department of Commerce is charged with the responsibility of operating City wharf, dock and harbor facilities located in the Delaware River and to develop the City's commerce and industry as they are affected by the use of the Port of Philadelphia and the facilities located therein.

10. In addition to the foregoing powers of home rule now exercised by the City of Philadelphia, the City is authorized to plan and construct and is currently engaged in planning and constructing municipal recreation facilities, the use of which will be affected by the condition of the Delaware River.

11. To safeguard the rights and lives of its citizens and to insure the faithful execution of its home rule powers, as set forth above, the City of Philadelphia requires an adequate flow of water in the Delaware River which will guarantee to the City an equitable share of the available water for purification and distribution to its citizens, without

necessitating more costly treatment of such water by reason of its impaired quality due to an inadequate supply, and will provide a proper dilution factor for the effluent from its sewage treatment plants.

12. During the ten-year period ending in 1950, the population of the City of Philadelphia increased 7.3%, while in the same period the population of the City of New York increased only 5.9%.

13. In the future, the City of Philadelphia will be required to increase substantially its use of water from the Delaware River because:

(a) The City is rapidly increasing its population and expanding its industries, with resultant increasing water needs by reason, inter alia, of the unpredecented population and industrial growth now taking place in the area of Morrisville, Pennsylvania, just north of this City.

(b) The City has already formulated plans for the construction of a new filter plant on the Delaware River at Torresdale which will increase the capacity of the City to utilize the waters of the Delaware River to the extent of approximately 412,000,000 gallons of water per day.

14. The City of Philadelphia is considering the feasibility of constructing upland water supply facilities on the Delaware River to the north of the City within the boundaries of Pennsylvania, the use of which would be impaired by the proposed diversion program of the City of New York.

WHEREFORE, for the foregoing reasons and because the City of New York, itself a municipality and an original party to these proceedings, seeks to divert for its own use the waters of the Delaware River and its tributaries to the serious impairment of the use of such waters by the City of Philadelphia, the City of Philadelphia prays that it be permitted to intervene as a party herein, to file the annexed Answer to the Petition of the City of New York for a modifi-

cation of this Court's decree entered on May 23, 1931, and to participate in all proceedings and hearings, offering evidence on its behalf as it considers relevant, appropriate and necessary.

Respectfully submitted,

CITY OF PHILADELPHIA,

By ABRAHAM L. FREEDMAN,
City Solicitor,
ROBERT M. LANDIS,
First Deputy City Solicitor,
JEROME J. SHESTACK,
Deputy City Solicitor,
703 City Hall Annex,
Philadelphia 7, Pa.,
Attorneys for the City of Philadelphia.

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COMMONWEALTH OF PENNSYLVANIA,
Intervenor.

ANSWER OF THE CITY OF PHILADELPHIA TO THE PETITION OF THE CITY OF NEW YORK TO AMEND DECREE.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The City of Philadelphia (hereinafter referred to as "Philadelphia"), in answer to the Petition of the City of New York to modify the decree (hereinafter referred to as "the Petition"), avers:

1, 2. Admitted.

3. The report of the Special Master and the opinion and decree of this Court speak for themselves, and the averments of paragraph 3 of the Petition therefore require no answer.

4. Philadelphia admits that this Court retained jurisdiction over this cause, but avers that such jurisdiction did not extend to its finding that the fair and equitable share of Delaware River water for the State and City of New York should be limited to the equivalent of 440,000,000 gallons per day.

5. On information and belief, Philadelphia admits that the consumption and use of water in the City of New York has been increasing since 1931, but avers that the consumption and use of water by Philadelphia has increased by a greater percentage than that of the City of New York during the corresponding period, for the reason that the population increase and industrial expansion in Philadelphia has been proportionately greater than that in the City of New York. Philadelphia denies that the consumption of water in the City of New York has reached the critical point, and avers that additional untapped sources of water are readily available to the City of New York from the watershed of the Hudson River, the use of which by that City has been recommended by qualified engineers and numerous civic agencies.

6. Philadelphia is without information sufficient to enable it to admit or deny the averments of paragraph 6 of the Petition.

7. Philadelphia is without information sufficient to enable it to admit or deny the averments of paragraph 7 of the Petition.

8. Admitted, on information and belief.

9. Philadelphia is without information sufficient to enable it to admit or deny the averments of paragraph 9 of the Petition, except that Philadelphia avers on information and belief that the City of New York has failed to utilize waters from the watershed of the Hudson River and has refused to accept the recommendations of numerous qualified engineers and civic agencies that the City of New York undertake the development of that source of supply.

10. Philadelphia is without information sufficient to enable it to admit or deny the averments of paragraph 10 of the Petition.

11-15. Philadelphia is without information sufficient to enable it to admit or deny the averments of paragraphs 11 to 15, inclusive, of the Petition, except that Philadelphia incorporates herein by reference that portion of paragraph 9 of its Answer which avers the failure of the City of New York to utilize the water supply available to it from the watershed of the Hudson River.

16. Philadelphia denies that the allocation to the City of New York of the amount of water sought in its Petition is in accordance with the principle of fair and equitable apportionment which this Court held to be controlling in this cause. Philadelphia avers that a stream regulation program is essential to the proper control and equitable allocation of the waters of the Delaware River and its tributaries, and avers that the program set forth in the Petition does not accord to Philadelphia adequate recognition of its water supply needs which must be met from the Delaware River. Philadelphia further avers that no such program should be adopted by this Court without affording to the City of Philadelphia full and fair opportunity to be heard as a party herein because of its status as a principal user of the waters of the Delaware River and as the only municipality endowed with special home rule powers and

responsibilities under the Constitution of the Commonwealth of Pennsylvania.

17, 18. Philadelphia avers that it is without information sufficient to enable it to admit or deny the averments of paragraphs 17 and 18 of the Petition.

19. Philadelphia admits that the City of New York seeks a modification of the decree as set forth in paragraph 19 of the Petition, and avers that neither such modification nor any modification should be undertaken by this Court without considering the evidence and arguments of the City of Philadelphia for the reasons set forth in paragraph 16 of this Answer.

20, 21. Admitted.

22. Philadelphia is without information sufficient to enable it to admit or deny the averments of paragraph 22 of the Petition for the reason that such averments are apparently based upon an assumption by the City of New York that this Court should and will permit that City to increase its diversion of the waters of the Delaware River far in excess of the allocation granted it in this Court's decree of May 25, 1931. Philadelphia further avers that such preferred treatment for the City of New York, in complete disregard of the interests of the City of Philadelphia in such waters, is unwarranted under the principle of fair and equitable apportionment of the waters of said river established as controlling by this Court in this cause.

23. Philadelphia is without information sufficient to enable it to admit or deny the assertion that the parties to this cause are in accord on the acceptability of the water release formula proposed in the Petition. Further answering, Philadelphia incorporates herein by reference paragraph 16 of this Answer.

24. Admitted.

WHEREFORE, the City of Philadelphia respectfully requests this Court to dismiss the Petition of the City of New York.

Respectfully submitted,

CITY OF PHILADELPHIA,

By ABRAHAM L. FREEDMAN,
City Solicitor,
ROBERT M. LANDIS,
First Deputy City Solicitor,
JEROME J. SHESTACK,
Deputy City Solicitor,
703 City Hall Annex,
Philadelphia 7, Penna.,
Attorneys for the City of Philadelphia.

AFFIDAVIT.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

ABRAHAM L. FREEDMAN, being duly sworn according to law, deposes and says that he is the City Solicitor of the City of Philadelphia; that he is duly authorized to make this affidavit on its behalf; that he has read the above Answer; and that the averments thereof in so far as they are within his personal knowledge are true and correct, and that in so far as they are upon information and belief, he believes them to be true and correct.

ABRAHAM L. FREEDMAN.

Sworn to and subscribed before me this 10th day of December, 1952.

MATHILDA LIBBY,
Notary Public.

My Commission Expires at end of next Session of Senate.